

## **DISCIPLINARY ORDER AND SETTLEMENT AGREEMENT**

The State Board of Embalmers and Funeral Directors, the Petitioner in AHC Case No. 14-1653EM (the "Board"), and Wood Family Funeral Home Inc., the Respondent in AHC Case No. 14-1653EM (the "Licensee" or "Funeral Home"), enter into this Disciplinary Order and Settlement (the "Settlement Agreement") to resolve the question of whether the Funeral Home's preneed seller license should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on this license.

1. Pursuant to the terms of RSMo. §536.060,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission ("AHC") and the right to a disciplinary hearing before the Board per §621.110 and stipulate and agree to final disposition of this matter by this Settlement Agreement. Upon execution of this Settlement Agreement, the Board shall move to dismiss AHC Case No. 14-1653EM.

2. Licensee, acting through its lawfully appointed representative, represents and acknowledges that it understands the various rights and privileges afforded to it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against it; the right to a decision upon the record by a fair and impartial AHC commissioner concerning the charges pending against it and, subsequently, the right to a hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against its license. Being aware of these rights provided it by operation of law, Licensee knowingly and voluntarily waives each and every one

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<sup>1</sup> All statutory references are to the current Revised Statutes of Missouri, unless otherwise indicated. References to portions of RSMo. Chapter 436 that were repealed in 2009 are designated as the "Prior Law."

of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to it.

3. Licensee acknowledges that it has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated and that it has been advised of its right to consult with private legal counsel, at its expense, to assist it with this matter. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license is subject to disciplinary action by the Board in accordance with the provisions of RSMo. Chapters 324, 333, and 621.

4. Licensee acknowledges that the statutory provisions set forth below are applicable to this Settlement Agreement, and Licensee represents that it is familiar with these provisions and has obtained copies of the same, if so desired.

5. It is expressly agreed to and understood that this Settlement Agreement does not resolve any actions by Licensee and/or issues which may have been identified by the Board following the filing of the Complaint in AHC Case No. 14-1653EM.

6. The parties to this Settlement Agreement agree and stipulate to the following findings of fact and conclusions of law:

A. The Board is an agency of the State of Missouri created and established pursuant to RSMo. §333.151 and is vested with the authority to execute and enforce the provisions of RSMo. Chapter 333 and portions of Chapter 436.

B. Licensee is a Missouri general corporation, active and in good standing, with Jeanette Wood as its registered agent and a registered address with the Board and the Missouri Secretary of State of 223 Market Street, Sainte Genevieve, Missouri, 63670.

C. Licensee holds preneed seller license number 2009039856. This license was originally issued on December 31, 2009. Licensee was also previously licensed as a preneed seller, with an original license date of January 2, 2003, and a termination date of August 28, 2009.

D. The Board conducted a financial examination of Licensee as authorized and mandated by RSMo. §436.470.

E. On or about October 3, 2011, the Board made an on-site visit to examine and review Licensee's preneed files.

F. Licensee did not cooperate with the Board and did not provide records prior to the on-site visit.

G. On or about October 3, 2011, Jeanette Wood, as President of the Licensee, signed the Financial Examination Attestation in which she attested that Licensee had "provided the State Board of Embalmers and Funeral Directors full and complete access to all records necessary for the board to conduct a financial examination of the books and records of this seller."

H. Upon completion of the financial examination, the Board's examiner prepared a Financial Examination Report, which was submitted to the Board by the examiner on or about October 21, 2011 (the "Financial Examination Report").

I. By letter dated November 2, 2011, the Board provided a copy of the Financial Examination Report to Licensee (the "Notification Letter").

J. In the Notification Letter, the Board noted the deficiencies identified in the Financial Examination Report and requested that Licensee send a written response to the Board within 30 days, including verification that the deficiencies were corrected or a plan to correct the deficiencies.

K. Licensee did not respond to the Notification Letter within 30 days.

L. On or about December 12, 2011, Jeanette Wood, acting on behalf of Licensee, asked for an extension of time to respond to the Notification Letter, and the Board granted the requested extension, allowing Licensee until December 22, 2011, to respond to the Notification Letter.

M. A reminder letter was sent by the Board to Licensee on February 28, 2012; as of January 10, 2012, Licensee had not responded to the Notification Letter.

N. By letter dated March 27, 2012, the Board notified Licensee of preneed deficiencies and violations, and the Board requested that Licensee notify the Board of correction of the violations within 60 days.

O. Representatives for Licensee appeared at the Board meeting held in April of 2012 to discuss the financial examination of Licensee.

P. By letter dated April 24, 2012, legal counsel for Licensee stated, among other things, that all of Licensee's active preneed accounts would be transferred to Missouri Funeral Trust.

Q. By letter dated May 15, 2012, the Board requested clarification and a status update regarding the exceptions listed in the Financial Examination Report and the March 27, 2012 letter from the Board.

R. By letter dated June 21, 2012, counsel for Licensee apologized for the delay and stated that he anticipated having a report to the Board the first week of July.

S. By letters dated July 20, 2012, and August 6, 2012, counsel for Licensee provided certain information to the Board on behalf of the Licensee.

T. By letter dated November 14, 2013, directed to legal counsel for the Licensee, the Board notified Licensee that there were unresolved exceptions and requested that Licensee respond within 15 days of said letter.

U. By letters dated December 12 and 17, 2013, counsel for Licensee responded to the November 14<sup>th</sup> Board letter; these letters did not address all deficiencies.

V. By letter dated September 18, 2014, directed to Licensee's legal counsel, the Board noted that deficiencies remain and requested that Licensee provide certain information to the Board by no later than October 8, 2014.

W. As of the filing of the AHC Complaint, October 16, 2014, Licensee had not replied to the September 18, 2014, Board letter, and the Licensee remains deficient in the respects set forth below.

X. RSMo. §333.011 states, in relevant part:

1. As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

(1) "Board", the state board of embalmers and funeral directors created by this chapter;

\* \* \*

(6) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

\* \* \*

(11) "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

Y. RSMo. §333.330 authorizes the Board to impose discipline upon funeral directors and preneed seller and provider licensees and states, in part, as follows:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

\* \* \*

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

\* \* \*

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by sections 436.400 to 436.520 regulating preneed which the licensee knows to be false or knowingly failing to make or file a report required by such sections;

\* \* \*

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436[.]

Z. RSMo. §436.405 defines terms used in Chapters 333 and 436 and states, in relevant part:

(5) "Joint account-funded preneed contract", a preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account in the names of the purchaser and seller, as provided in this chapter[.]

AA. RSMo. §436.412 states:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071\* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

BB. RSMo. §436.415.2 sets forth seller's duties:

The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract and ensure that is [sic] statutorily and contractual duties are met, in compliance with sections 436.400 to 436.520.

CC. RSMo. §436.455 provides:

1. A joint account-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the preneed contract shall be deposited with a financial institution chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the seller and purchaser, beneficiary or party holding power of attorney over the beneficiary's estate, or in an account titled in the beneficiary's name and payable on the beneficiary's death to the seller. There shall be a separate joint account established for each preneed contract sold or arranged under this section. Funds shall only be withdrawn or paid from the account upon the signatures of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.

3. All consideration paid by the purchaser under a joint account-funded contract shall be deposited into a joint account as authorized by this section within ten days of receipt of payment by the seller.

4. The financial institution shall hold, invest, and reinvest funds deposited under this section in other accounts offered to depositors by the financial institutions as provided in the written agreement of the purchaser and the seller, provided the financial institution shall not invest or reinvest any funds deposited under this section in term life insurance or any investment that does not reasonably have the potential to gain income or increase in value.

5. Income generated by preneed funds deposited under this section shall be used to pay the reasonable expenses of administering the account as charged by the financial institution and the balance of the income shall be distributed or reinvested upon fulfillment of the contract, cancellation or transfer pursuant to the provisions of this chapter.

6. Within fifteen days after a provider delivers a copy of a certificate of performance to the seller, signed by the provider and the person authorized to make arrangements on behalf of the beneficiary, certifying that the provider has furnished the final disposition, funeral, and burial services and facilities, and merchandise as required by the preneed contract, or has provided alternative funeral benefits for the beneficiary under special arrangements made with the purchaser, the seller shall take

whatever steps are required by the financial institution to secure payment of the funds from the financial institution. The seller shall pay the provider within ten days of receipt of funds.

7. Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

DD. RSMo. §436.465 requires a seller to maintain adequate books and records and states:

A seller shall maintain:

(1) Adequate records of all preneed contracts and related agreements with providers, trustees of a preneed trust, and financial institutions holding a joint account established under sections 436.400 to 436.520;

(2) Records of preneed contracts, including financial institution statements and death certificates, shall be maintained by the seller for the duration of the contract and for no less than five years after the performance or cancellation of the contract.

EE. RSMo. §436.470 authorizes financial examinations and requires the cooperation of the licensee and states, in relevant part:

\* \* \*

2. The board shall have authority to conduct inspections and investigations of providers, sellers, and preneed agents and conduct financial examinations of the books and records of providers, sellers, and preneed agents and any trust or joint account to determine compliance with sections 436.400 to 436.520, or to determine whether grounds exist for disciplining a person licensed or registered under sections 333.310 to 333.340, at the discretion of the board and with or without cause. The board shall conduct a financial examination of the books and records of each seller as authorized by this section at least once every five years, subject to available funding.

\* \* \*

5. The board may request that the director of the division of professional registration, the director of the department of insurance, financial institutions and professional registration, or the office of the attorney general designate one or more investigators or financial examiners to assist in any investigation, examination, or audit, and such assistance shall not be unreasonably withheld.



6. The person conducting the inspection, investigation, or audit may enter the office, premises, establishment, or place of business of any seller or licensed provider of preneed contracts, or any office, premises, establishment, or place where the practice of selling or providing preneed funerals is conducted, or where such practice is advertised as being conducted for the purpose of conducting the inspection, investigation, examination, or audit.

7. Upon request by the board, a licensee or registrant shall make the books and records of the licensee or registrant available to the board for inspection and copying at any reasonable time, including, any insurance, trust, joint account, or financial institution records deemed necessary by the board to determine compliance with sections 436.400 to 436.520.

\* \* \*

9. All sellers, providers, preneed agents, and trustees shall cooperate with the board or its designee, the division of finance, the department of insurance, financial institutions and professional registration, and the office of the attorney general in any inspection, investigation, examination, or audit brought under this section.

\* \* \*

FF. The statutes regulating preneed contracts changed, effective August 28, 2009, but due to the savings clause found in §436.412, portions of the law from the Revised Statutes of Missouri (2000) (the "Prior Law") are relevant to this Complaint. RSMo. §436.412 provides:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071\* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

GG. RSMo. §436.005 set forth definitions for the Prior Law and stated, in relevant part:

(5) "Preneed contract", any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not

limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary in the contract of insurance[.]

HH. RSMo. §436.007 (2000) stated, in relevant part:

1. Each preneed contract made after August 13, 1982, shall be void and unenforceable unless:

- (1) It is in writing;
- (2) It is executed by a seller who is in compliance with the provisions of section 436.021;
- (3) It identifies the contract beneficiary and sets out in detail the final disposition of the dead body and funeral services, facilities, and merchandise to be provided;
- (4) It identifies the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;
- (5) The terms of such trust and related agreements among two or more of the contract seller, the contract provider, and the trustee of such trust are in compliance with the provisions of sections 436.005 to 436.071;
- (6) It contains the name and address of the seller and the provider[.]

II. Section 436.021.2(1) of the Prior Law required the seller to maintain records related to preneed contracts and stated, in relevant part:

2. Each seller under one or more preneed contracts shall:

- (1) Maintain adequate records of all such contracts and related agreements with providers and the trustee of preneed trusts regarding such contracts, including copies of all such agreements[.]

JJ. Section 436.053.1 of the Prior Law stated, in relevant part:

Notwithstanding the provisions of sections 436.021 to 436.048, the provider and the purchaser may agree that all funds paid the provider by the purchaser shall be deposited with financial institutions chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the provider and purchaser. If the purchaser has irrevocably waived and renounced his right to cancel the agreement between the provider and the purchaser pursuant to subdivision (5) of this subsection, such agreement may provide that all funds held in the account at the beneficiary's death shall be applied toward the purchase of funeral or burial services or

facilities, or funeral merchandise, selected by the purchaser or the responsible party after the beneficiary's death[.]

KK. In violation of RSMo. §§436.455, 436.460, 436.465, and 436.470 and §§436.021.2(1) and 436.053 of the Prior Law, the actions of Licensee outlined above failed to correct or sufficiently address the following deficiencies:

- i. Consumer funds held in a money market account that is not compliant with law;
- ii. Licensee has failed to provide documentation sufficient to identify which consumer funds are included and the amount per consumer;
- iii. Failure to maintain adequate records and the failure to consistently file preneed funds on Licensee's preneed seller annual report;
- iv. Failure to provide sufficient documentation relating to consumer LW and her preneed contract; and
- v. Failure to provide appropriate documentation regarding transfer of seller and funding obligations, if such transfers have occurred.

LL. In violation of RSMo. §§436.470 and 436.465 and §436.021.2(1) of the Prior Law, Licensee failed to maintain records and cooperate fully with the Board in the exercise of its statutory duty to conduct a financial exam of Licensee's preneed transactions.

MM. Licensee's conduct, as set forth herein, constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, and/or dishonesty in the performance of its functions and duties as a preneed seller.

NN. Licensee's conduct, as set forth herein, constitutes a violation of a professional trust and/or confidence.

OO. The Board has cause to discipline the preneed seller license of the Funeral Home pursuant to RSMo. §333.330.2 (5), (6), (14), (15) and/or (19).

7. The parties agree and stipulate that the following paragraph 8, including all subparts thereof, shall constitute the disciplinary order entered by the Board in this matter under the authority of RSMo. §333.330 and §621.045.3.

8. Licensee's license to practice as a seller is placed on **PROBATION** for a period of **FIVE YEARS** from the effective date of this Settlement Agreement (the "Disciplinary Period") (see paragraphs 16-17 below regarding the effective date). During the Disciplinary Period, Licensee shall be entitled to practice as a seller, subject to applicable law and the following terms and conditions of probation:

A. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change(s) in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with the current and active e-mail address of its funeral director in charge and its manager in charge.

B. Licensee shall comply with all applicable provisions of RSMo. Chapters 194, 333, and 436, all Board regulations, and all federal, state, and local laws and regulations related to business operations in the funeral and death care industry, including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts.

C. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission.

D. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice, and Licensee shall cooperate with the Board's inquiries and requests, including providing adequate assurances to the Board regarding Licensee's preneed activities. Meetings shall be at the Board's discretion.

E. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions.

F. Licensee shall timely renew all licenses and/or registrations, shall pay timely all fees required for licensure/registration, and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active.

G. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation.

H. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be submitted more than 14 days before it is due. Each compliance report shall state truthfully whether there has been full compliance with the terms and conditions of this Settlement Agreement for the previous six month period and shall fully explain any non-compliance. These compliance reports shall contain all other information required by this Settlement Agreement. Compliance reports may be submitted on a form provided by the Board, but

failure to receive such a form from the Board shall not excuse the timely submission of any compliance report by Licensee.

I. With regard to the account for LW, Licensee shall make monthly deposits of \$200, beginning on March 1, 2016, for a total of ten months (or until \$2,000 has been deposited).

9. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

10. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's license shall be fully restored, if all other requirements of the law have been and are being satisfied; provided, however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, impose additional probation and/or suspend, revoke, or otherwise lawfully discipline Licensee's license.

11. The Board shall enter no order imposing further discipline on Licensee's license without notice and an opportunity for hearing before the Board in accordance with the provisions of RSMo, Chapter 536.

12. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the AHC or in a circuit court, the Board may elect to pursue any lawful remedies or procedures

afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

13. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on the license of Licensee. The Board has continuing jurisdiction to hold a hearing to determine if a violation of the terms and conditions of probation occurred.

14. Licensee, together with its heirs, successors, and assigns, and its attorney, do hereby waive, release, acquit, and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to RSMo. §536.087, or any claim arising under 42 U.S.C. §1983, which may be based upon, arise out of, or relate to any of the matters raised in AHC Case No. 14-1653EM, its settlement, or from the negotiation or execution of this Settlement Agreement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

15. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

16. Licensee understands that it may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to

the AHC for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the AHC to review this Settlement Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri, 65102.

17. If Licensee requests review, this Settlement Agreement shall become effective on the date the AHC issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the AHC, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

18. This Settlement Agreement, which constitutes an order of the Board, shall be maintained as an open and public record of the Board as provided in RSMo. Chapters 333, 610, and 324.

**Licensee:**

Wood Family Funeral Home, Inc  
By: Jeanette R. Wood  
Its: President

Dated: 01-27-2016

**Board:**

Sandy Sebastian  
By: Sandy Sebastian, Executive Director  
State Board of Embalmers and Funeral Directors

Dated: 1.27.2016

**EFFECTIVE DATE**  
2.11.2016  
**STATE BOARD OF EMBALMERS  
AND FUNERAL DIRECTORS**